

REMARKS

Claims 1-20 are now pending in the above-captioned application.

REJECTION UNDER 35 U.S.C. §103

Claims 1, 3-4, 6-9, 11-15, and 17-19 were rejected under 35 U.S.C. §103 as being unpatentable over Hylton in view of Ritter. Applicant respectfully traverses this rejection.

Both references have an effective publication date more than one year prior to applicant's filing date.

In order to be complete, an obviousness-type rejection must contain two elements:

1. The references, as combined, must show all the features of the claimed invention (all elements rule); and
2. A *proper* motivation to combine the references must be provided.

In this instance, neither element is present.

As applicant has noted in the Specification of the present application, the concept of using ultraviolet light to sanitize toothbrushes goes back many years. However, despite the large number of Patents, such as Hylton and Ritter, teaching the general concept of using ultraviolet light to sanitize toothbrushes, no commercially successful device has yet to materialize.

Applicant's device has some novel features which have made it a commercial success in the marketplace. The device has been featured in the Sharper Image™ and Skymall™ catalogs and applicant has sold a large quantity of these devices to date.

In particular, three features (among others) have made the apparatus successful where others have failed. First, the apparatus has a safety switch, which prevents users (particularly children) from activating the ultraviolet light when the cover is off. Second, a drip cup is provided to prevent wet toothbrushes from shorting out electrical circuitry and also allow the device to be easily cleaned. Third,

a removable peg is provided to allow different types of toothbrushes and dental devices (e.g., electric toothbrush heads) to be inserted in the device at the optimal location for sanitizing.

The Office Action claims that Hylton and Ritter show all of these novel and useful features. Applicant respectfully disagrees. The Office Action, Page 2, lines 19-21, claims that the cylindrical cup of Hylton is equivalent to applicant's drip cup. Hylton refers to element 70 as his "cylindrical cup structure" (Col. 4, lines 40-56) whose primary function appears to be to reflect light onto the toothbrushes. However, this "cup structure" is hardly cup-like, in that it has a large hole located in the center of it, with no provision made to prevent fluids from leaking through this hole. Annular ledge 76 is formed at the bottom of the opening and registers with the lid openings (Col. 4, lines 55-56). See Figures 1 and 2.

It is clear from the description of Hylton and the Figures therein that his "cup structure" is incapable of preventing water and other debris from wet toothbrushes from dripping into the body of the apparatus (hence his "cup structure" is not a "drip cup" by definition). As a result, one can see why the Hyland device was not a market success. The design looks like a recipe for electrocution.

Applicant's drip cup solves this problem. The drip cup (See, e.g., Figures 2, 5, 6, 7, 8, 20 of the present Specification) has a bottom which is *inclined* to form a cup structure for retaining fluids in an annular portion of the drip cup. Claims 3, 11, and 14 have been amended to highlight this feature of the invention.

Ritter has been combined with Hylton to allegedly show the use of a safety switch. However, the "cover switch" of Ritter (Col. 4, lines 24-33) is more of an *unsafety* switch than anything else. As illustrated in Figure 2 and as described in the aforementioned sections of Ritter, his switch 58 is located right at the edge of the housing, where a user could depress it when opening the device – either accidentally or out of curiosity (as in the case of children). Once pressed, this switch 58 would activate the ultraviolet light, possibly damaging the eyesight of the user.

Applicant anticipated this problem and designed a solution. See applicant's Figure 6. In the present invention, the switch 307A is located within the body of the device (not on an easily accessible edge) and is depressed by an elongated member. In the embodiment shown in Figure 6, this member may comprise an extended portion 301A and a safety rod 306. A user would have difficulty accessing

switch 301A either accidentally or intentionally, as the switch is mounted at the end of a long aperture smaller than a child's finger.

Claims 1, 2, 10, 19 and 20 have been amended to more clearly define the safety switch of the present invention, as well as the safety rod and the orifice in the housing accepting the rod.

Claims 2, 10 and 20 were rejected under 35 USC §103 as being unpatentable over Hylton and Ritter, further in view of Lackey. Lackey is applied to the mix to allegedly show the safety rod of claims 2, 10 and 20.

Lackey's "safety rod" is hardly that. As illustrated in the Figure 8 cited by the Examiner, the safety switch is connected to a cam-like lever 128, In contrast to applicant's invention, the switch of Lackey can be easily and accidentally activated as the lever is located on the outside of the inner assembly, and a user trying to assemble the parts would be inclined to mash this lever with the hand when assembling. If plugged in, the UV light would be activated. A child playing with the device could easily activate the device.

Again, claims 2, 10, and 20 have been amended to more clearly recite applicant's safety feature, where the safety rod extends into an orifice of the apparatus such that a user cannot press down on the button. In the preferred embodiment, the safety rod is made integral with the cap such that the rod cannot be used to activate the device without the cap in place.

Claims 1, 3-9, and 11-19 were rejected under 35 USC §103 as being unpatentable over Hylton in view of Foster, further in view of Ritter. Applicant's previous comments about Hylton and Ritter are again applied here.

The Foster reference is puzzling. Although a cover switch 32 is described in the schematic of Figure 1 and the duty cycle drawing of Figure 3, there is no illustration of the cover switch in the cross-section Figure 2 or end view Figure 4. Thus, it is impossible to determine where the cover switch of Foster is located, and moreover, there is no description of the location and actuation of such a cover switch anywhere in the description of Foster. In short, Foster adds nothing to the Ritter and Hylton references, other than another generic recitation of a cover switch, which Ritter already provides.

None of the three references teach or suggest placing a cover switch within the body of the apparatus to prevent a user from accidentally activating the device, or the use of a safety rod to prevent a user from activating the cover switch manually.

What is interesting about this rejection is the Examiner's comment (Office Action, Page 7, lines 13-17) that the peg feature of the present invention is "obvious" as "it has been held that constructing a former integral structure in various elements involves only routine skill in the art." No citation of case law, MPEP, Rule, Law, or even Patent Office Policy has been made to support this bald assertion. Moreover, nowhere else in the Office Action is the peg limitation addressed in the rejections.

Claim 8 has been amended to recite the removable peg in an independent claim form. The concept of the removable peg allows other types of dental devices such as electric toothbrush heads to be inserted into the apparatus without falling down inside and also providing an optimal location of the toothbrush head vis-à-vis the UV light. The idea that this aspect of the invention is merely making an integral component into various components is laughable, as there is no prior art reference showing such a peg integrated into a UV toothbrush sanitizing apparatus.

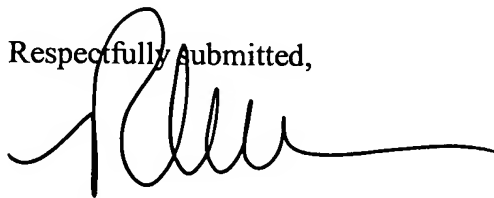
Moreover, there is more to this aspect of the invention than merely taking an integral device and devolving it into component forms. The peg has a function in and of itself by being removable. When inserted, it allows an electric toothbrush head to be inserted (for example) without falling down inside the unit. When removed, it allows a more traditional manual toothbrush to be inserted. The removable peg provides a functionality far and above merely componentizing an integral structure.

CONCLUSION

None of the three major components of the present invention are taught or suggested by the Prior Art cited in the Office Action. Hyland, Ritter, and Foster do not teach a safety switch that is embedded within the body of the apparatus and activated by an extended portion from the cap passing into an orifice in the body. None of the references show a drip cup for catching water and detritus from a toothbrush head. And no reference has been cited to show the use of a removable peg to allow the apparatus be adapted for different dental devices. As the claims have been amended to more clearly point out the advantages of the present invention, applicant submits that all of claims 1-20 are now in condition for allowance.

An early Notice of Allowance is respectfully requested.

Respectfully Submitted,



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